



FILE # ML-40246-
I.D. # 40246

Texas House of Representatives
COMMITTEE ON GENERAL INVESTIGATING

Pete P. Gallego
Chairman

Joe Crabb
Vice-Chairman

April 24, 1998

Members:
Patricia Gray
Robert Junell
D.R. "Tom" Uher

Joe D. Valenzuela
Committee Clerk

The Honorable Dan C. Morales
Attorney General of Texas
P. O. Box 12548, Capitol Station
Austin, TX 78711-2548

RO-1130

RECEIVED

MAY 01 1998

Opinion Committee

RE: Request for Attorney General's Opinion: May an individual now holding office as a member of the board of trustees for the Eagle Pass Independent School District serve simultaneously as a state district court judge if the terms for each office overlap?

Dear General Morales:

On behalf of the Eagle Pass Independent School District (EPISD), I am requesting an Attorney General's opinion with regard to dual office holding. For the reasons enunciated below, the EPISD is of the opinion that the specific facts of this case present a novel question.

The facts are as follows: A trustee now sitting on the EPISD school board was recently elected as the Democratic nominee for the office of district judge for the 294th Judicial District. She faces no opposition in the November general election. Assuming she is elected as district judge in November, her term will begin in January of 1999. Her term as a member of the board of trustees ends in May of 2000.

The school district would like to determine if the above person may continue to serve as a trustee and complete her term while also assuming the office of district judge. As part of your analysis, it is important to note that Maverick County is served by two judicial districts (the 294th and the 365th) with completely concurrent jurisdiction. As required by law, the judge would recuse herself from any matter involving the EPISD thus allowing the other district court to hear these matters. Further, the judge would not seek reelection as a trustee, but would merely wish to complete the term to which she was elected.

Letter to Attorney General Morales Requesting Opinion for EPISD

April 24, 1998

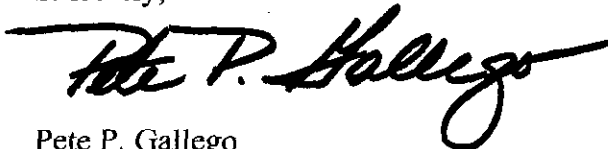
Page Two

Although the Office of the Attorney General has opined that a school trustee cannot simultaneously serve as a judge for a county court at law,¹ these opinions did not consider Canon 4 of the Code of Judicial Conduct which allows a judge to serve as trustee of an educational organization and to represent her locality in educational activities.² Moreover, in 1983, a Texas Court of Appeals panel held that a school trustee could simultaneously serve as a justice of the peace if the judge recused himself from matters involving the school district.³

Further, the Eagle Pass Independent School District does not believe that other Texas constitutional provisions would be violated, in particular Article XVI, Sec. 40⁴ or Article II, Sec. 1⁵, because trustees are not paid for their service⁶ (and therefore do not hold offices of "emolument") and there has been no clear and definitive determination as to the branch of government to which the office of school board trustee belongs.⁷

I would appreciate your researching and ruling on this issue at your earliest convenience. Should you require additional information, please contact me.

Sincerely,



Pete P. Gallego

PPG/bp

c: Mr. Leonel Galaviz, Superintendent, EPISD
Mr. Bob J. Ramirez, Attorney at Law

¹ Tex. Att'y Gen. JM-213 (1984); Tex. Att'y Gen. LA-23 (1973).

²Tex. Gov't Code Appendix, Code of Judicial Conduct, T.2, Subt. G, App. B, Canon 4.D., H. (Vernon's, 1998).

³Turner v. Trinity I.S.D., 700 S.W.2d 1, 2 (Tex.App.-Houston [14th Dist.] 1983).

⁴Generally, Art. XVI, Sec. 40, of the Texas Constitution prohibits a person from holding more than one civil office of emolument.

⁵Generally, Art. II, Sec. 1 prohibits one person from holding two offices in different branches of government.

⁶See Tex. Educ. Code Section 11.061(d).

⁷It may be argued that a trustee for an independent school district is a member of the executive branch of government as one appeals court has assumed. See Turner v. Trinity I.S.D., 700 S.W.2d 1, 2 (Tex. App.-Houston [14th Dist.] 1983).